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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,818	01/09/2001	Steven M. Falk	OM 106	6154

26009 7590 02/09/2004
ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND, SC 29926

EXAMINER

ROBINSON, DANIEL LEON

ART UNIT PAPER NUMBER

3742

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/756,818

Applicant(s)

FALK, STEVEN M.

Examiner

Daniel I. Robinson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Response to Amendment

Election/Restrictions

Applicant's election without traverse of Group II Claims 7-12 in Paper No. 5 is acknowledged.

Claims 1-6 and 13-16 are withdrawn from consideration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldenberg et al.(U.S.Pat.6,296,606) in view of Patel(U.S.Pat.4,331,161). Goldberg discloses a patient thermal support device that shows many of the features of the claimed invention save the explicitly claimed features of a thermister affixed to a patient. Goldberg shows two inputs to a microprocessor controller from two temperature sensors 202 and 206, a temperature display, a radiant heater 56 and a heater 76. The microprocessor compares the sensor outputs to a setpoint temperature or a default setpoint temperature and continuously calculates a setpoint error. The microprocessor operates to drive the error(derivative with respect to time) to zero and to activate an alarm if needed if a range of values is exceeded. A holdoff period is initiated upon startup. The alarm can be associated with either an under or over temperature condition(Figs. 17-23).

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Patel discloses a patient sensor continuity detector that explicitly shows a thermister affixed to a patient Figs. 1-5. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a thermister affixed to a patient as taught by Patel because the thermister is well known in the art as a temperature sensor and can be affixed to a patient with normal adhesive tape to ascertain the patient's skin temperature.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg in view of Patel as applied to claims 7-9 and 12 above, and further in view of Koch(U.S.Pat.6,048,304). Goldberg in view of Patel does not show an analog to digital converter at the temperature sensor output. Koch discloses a process of control that shows an A/D converter at an output. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use an A/D converter at the sensor output because the values are easily stored in a digital memory.

Response to Arguments

Applicant's arguments filed 11-24-2003 have been fully considered but they are not persuasive. There were no arguments with respect to claims 8-12.

Applicants argument that Goldberg does not show a calibration system has been considered. Calibration, is to check, adjust, detect or determine via a comparison to a known value and the Goldberg reference does all four with regard to either a default setpoint, a set setpoint or a previous measured/calculated value or difference. The value of an error is

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calculated and compared to a range of alarm conditions and the difference between a setpoint and a measured value is calculated so as to adjust the output of a heater via a signal from the microprocessor. These features show all the claimed subject matter with regard to the independent Claim 7 as discussed in the amendment paper #7. Applicant may possibly overcome the rejection by explicitly claiming a linear network is being calibrated by inputting two signals to this linear network and after a comparison determining the slope and intercept applicable to the linear network by solving for the two unknowns with the two resulting equations. As presently claimed the Goldberg reference calculates a range/offset/intercept and a slope/derivative/span as per claim 7.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kobayashi, Goldberg'149, Moll, and Goldberg'634 are cited to show structure similar to the claimed invention.

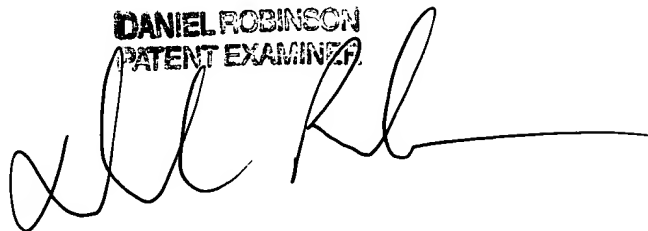
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043.

The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0861.

DANIEL ROBINSON
PATENT EXAMINER

A handwritten signature in black ink, appearing to be 'D. I. Robinson', written over the printed name and title.